

AMENDED IN SENATE MAY 4, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1467

Introduced by Assembly Member ~~Laird~~ Nunez and Senator Perata

February 22, 2005

~~An act to amend Sections 17581 and 17581.5 of the Government Code, relating to state mandates. An act to amend Section 143 of, and to add Section 149.7 to, the Streets and Highways Code, relating to transportation.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1467, as amended, ~~Laird~~ Nunez. ~~State mandates. Transportation projects; facilities; public-private partnerships.~~

Existing law, until January 1, 2003, authorized the Department of Transportation to solicit proposals and enter into agreements with private entities or consortia for the construction and lease of no more than 2 toll road projects, and specified the terms and requirements applicable to those projects. Existing law authorizes the department to construct high-occupancy vehicle and other preferential lanes.

This bill, until January 1, 2012, would instead authorize the department and regional transportation agencies, as defined, to enter into comprehensive development lease agreements with public and private entities, or consortia of those entities, for certain transportation projects that may charge certain users of those projects tolls and user fees, subject to various terms and requirements.

The number of projects authorized by these provisions would be limited to 4, with 2 in northern California and 2 in southern California, as selected by the California Transportation Commission. The projects would be primarily for improvement of goods movement.

The bill would also authorize regional transportation agencies, in cooperation with the department, to apply to the commission to develop and operate high-occupancy toll lanes, including the administration and operation of a value pricing program and exclusive or preferential lane facilities for public transit, as specified. The bill would, until January 1, 2012, prescribe the procedures for approval of the applications and limit the number of approved projects to 4, 2 in northern California and 2 in southern California, and would enact other related provisions.

~~Under the California Constitution, whenever the Legislature or a state agency mandates a new program or higher level of service on any local government, including school districts, the state is required to provide a subvention of funds to reimburse the local government, with specified exceptions.~~

~~Existing law provides that no local agency or school district shall be required to implement or give effect to any statute or Executive order, or portion thereof that imposes a mandate during any fiscal year and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if specified conditions are met, including that the statute or Executive order, or portion thereof, has been specifically identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year.~~

~~This bill would provide that, under these provisions, the mandate also could be specifically identified by the Legislature in the Budget Act by reference to the commission's test claim number.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 143 of the Streets and Highways Code is
- 2 amended to read:
- 3 143. (a) The department may solicit proposals and enter into
- 4 agreements with private entities, or consortia thereof, for the
- 5 construction by, and lease to, private entities of two public
- 6 transportation demonstration projects. The department shall not
- 7 enter into an agreement for any new proposals under this
- 8 authority after January 1, 2003. (1) "Regional transportation
- 9 agency" means any of the following:

1 (A) A transportation planning agency as defined in Section
2 29532 or 29532.1 of the Government Code.

3 (B) A county transportation commission as defined in Section
4 130050, 130050.1, or 130050.2 of the Public Utilities Code.

5 (C) Any other local or regional transportation entity that is
6 designated by statute as a regional transportation agency.

7 (D) A joint exercise of powers authority as defined in Chapter
8 5 (commencing with Section 6500) of Division 7 of Title 1 of the
9 Government Code, with the consent of a transportation planning
10 agency or a county transportation commission for the
11 jurisdiction in which the transportation project will be
12 developed.

13 (2) "Transportation project" means one or more of the
14 following: planning, design, development, finance, construction,
15 reconstruction, rehabilitation, improvement, acquisition, lease,
16 operation, or maintenance of highway, public street, rail, or
17 related facilities supplemental to existing facilities currently
18 owned and operated by the department or regional
19 transportation agencies that is consistent with the requirements
20 of paragraph (2) of subdivision (b).

21 (b) (1) Notwithstanding any other provision of law, only the
22 department, in cooperation with regional transportation
23 agencies, and regional transportation agencies, may solicit
24 proposals, accept unsolicited proposals, negotiate, and enter into
25 comprehensive development lease agreements with public or
26 private entities, or consortia thereof, for transportation projects.

27 (2) The number of projects authorized pursuant to this section
28 shall be limited to two projects in northern California and two
29 projects in southern California. The California Transportation
30 Commission shall select the candidate projects from projects
31 nominated by the department or a regional transportation
32 agency. No less than two of the selected projects shall be
33 nominated by a regional transportation agency. The projects
34 shall be primarily designed to improve goods movement,
35 including, but not limited to, exclusive truck lanes and rail access
36 and operational improvements. The projects shall address a
37 known forecast demand, as determined by the department or
38 regional transportation agency.

39 (3) All negotiated lease agreements shall be submitted to the
40 Legislature for approval or rejection. Any approval shall be

1 *achieved by the enactment of a statute. Prior to submitting a*
2 *lease agreement to the Legislature, the department or regional*
3 *transportation agency shall conduct at least one public hearing*
4 *at a location at or near the proposed facility for purposes of*
5 *receiving public comment on the lease agreement. Public*
6 *comments made during this hearing shall be submitted to the*
7 *Legislature with the lease agreement.*

8 ~~(b)~~

9 *(c) For the purpose of facilitating those projects, the*
10 *agreements between the parties may include provisions for the*
11 *lease of rights-of-way in, and airspace over or under, state*
12 *highways, public streets, rail, or related facilities for the granting*
13 *of necessary easements, and for the issuance of permits or other*
14 *authorizations to enable the private entity to construct*
15 *construction of transportation facilities supplemental to existing*
16 *state-owned transportation facilities projects. Facilities*
17 *constructed by a private entity pursuant to subject to an*
18 *agreement under this section shall, at all times, be owned by the*
19 *state department or the regional transportation agency, as*
20 *appropriate. The agreement shall provide for the lease of those*
21 *facilities to the private entity for up to 35 years. For department*
22 *projects, the commission shall certify the department's*
23 *determination of the useful life of the project in establishing the*
24 *lease agreement terms. In consideration therefor, the agreement*
25 *shall provide for complete reversion of the privately constructed*
26 *leased facility to the state, together with the right to collect tolls*
27 *and user fees, to the department or regional transportation*
28 *agency, at the expiration of the lease at no charge to the state*
29 *department or regional transportation agency. At time of*
30 *reversion, the facility shall be delivered to the department or*
31 *regional transportation agency, as applicable, in a condition that*
32 *meets the performance and maintenance standards established*
33 *by the department and that is free of any encumbrance, lien, or*
34 *other claims.*

35 ~~(e)~~

36 *(d) (1) The department or a regional transportation agency*
37 *may exercise any power possessed by it with respect to the*
38 *development and construction of state transportation projects to*
39 *facilitate the development and construction of transportation*
40 *projects pursuant to this section. Agreements for maintenance*

1 ~~and police services entered into pursuant to this section shall~~
2 ~~provide for full reimbursement for services rendered by the~~
3 ~~department or other state agencies. The department, regional~~
4 ~~transportation agency, and other state or local agencies may~~
5 ~~provide services to the contracting entity for which it the public~~
6 ~~entity is reimbursed with respect to preliminary, including, but~~
7 ~~not limited to, planning, environmental planning, environmental~~
8 ~~certification, and environmental review, preliminary design,~~
9 ~~design, right-of-way acquisition, construction, maintenance, and~~
10 ~~policing of the demonstration these transportation projects. The~~
11 ~~department or regional transportation agency, as applicable,~~
12 ~~shall regularly inspect the facility and require the lessee to~~
13 ~~maintain and operate the facility according to adopted~~
14 ~~standards. The lessee shall be responsible for all costs due to~~
15 ~~development, maintenance, repair, rehabilitation, and~~
16 ~~reconstruction, and operating costs.~~

17 (2) *In selecting private entities with which to enter into these*
18 *agreements, notwithstanding any other provision of law, the*
19 *department and regional transportation agencies may, but are*
20 *not limited to, utilizing one or more of the following procurement*
21 *approaches:*

22 (A) *Solicitations of proposals for defined projects and calls for*
23 *project proposals within defined parameters.*

24 (B) *Prequalification and short-listing of proposers prior to*
25 *final evaluation of proposals.*

26 (C) *Final evaluation of proposals based on qualifications, best*
27 *value, or both. If final evaluation is to be based on best value, the*
28 *California Transportation Commission shall develop and adopt*
29 *criteria for making that evaluation prior to evaluation of a*
30 *proposal.*

31 (D) *Negotiations with proposers prior to award.*

32 (E) *Acceptance of unsolicited proposals, with issuance of*
33 *requests for competing proposals.*

34 (3) *No agreement entered into pursuant to this section shall*
35 *infringe on the authority of the department or a regional*
36 *transportation agency to develop, maintain, repair, rehabilitate,*
37 *operate, or lease any transportation project. Lease agreements*
38 *may provide for reasonable compensation to the leaseholder for*
39 *the adverse effects on toll revenue or user fee revenue due to the*

1 *development, operation, or lease of supplemental transportation*
2 *projects with the exception of any of the following:*

3 *(A) Projects identified in regional transportation plans*
4 *prepared pursuant to Section 65080 of the Government Code and*
5 *submitted to the commission as of the date the commission*
6 *selected the project to be developed through a lease agreement,*
7 *as provided in this section, unless provided by the lease*
8 *agreement approved by the department or regional*
9 *transportation agency and the commission.*

10 *(B) Safety projects.*

11 *(C) Improvement projects that will result in incidental*
12 *capacity increases.*

13 *(D) Additional high-occupancy vehicle lanes or the conversion*
14 *of existing lanes to high-occupancy vehicle lanes.*

15 *(E) Projects located outside the boundaries of a public-private*
16 *partnership project, to be defined by the lease agreement.*

17 *However, compensation to a leaseholder shall only be made*
18 *after a demonstrable reduction in use of the facility resulting in*
19 *reduced toll or user fee revenues, and may not exceed the*
20 *reduction in those revenues.*

21 ~~(d)~~

22 *(e) (1) Agreements entered into pursuant to this section shall*
23 *authorize the ~~private~~ contracting entity to impose tolls and user*
24 *fees for use of a facility constructed by it, and shall require that*
25 *over the term of the lease the toll revenues and user fees be*
26 *applied to payment of the ~~private entity's~~ capital outlay costs for*
27 *the project, the costs associated with operations, toll and user fee*
28 *collection, administration of the facility, reimbursement to the*
29 *state department or other governmental entity for the costs of*
30 *~~maintenance and police~~ services to develop and maintain the*
31 *project, police services, and a reasonable return on investment to*
32 *the ~~private~~ entity. The agreement shall require that,*
33 *notwithstanding Sections 164, 188, and 188.1, any excess toll or*
34 *user fee revenue either be applied to any indebtedness incurred*
35 *by the ~~private~~ contracting entity with respect to the project,*
36 *improvements to the project, or be paid into the State Highway*
37 *Account, or both for all three purposes, except that any excess*
38 *toll revenue under a lease agreement with a regional*
39 *transportation agency may be paid to the regional transportation*

1 agency for use in improving public transportation in and near
2 the project boundaries.

3 (2) Lease agreements shall establish specific toll or user fee
4 rates. Any proposed increase in those rates during the term of the
5 agreement shall first be approved by the department or regional
6 transportation agency after at least one public hearing
7 conducted at a location near the proposed or existing facility.

8 (3) ~~The authority to collect collection of tolls and user fees for~~
9 ~~the use of these facilities shall terminate~~ may be extended by the
10 commission or regional transportation agency at the expiration
11 of the ~~franchise~~ lease agreement. However, those tolls or user
12 fees may not be used for any purpose other than for the
13 improvement, continued operation, or maintenance of the
14 facility.

15 (4) Tolls and user fees may not be charged to noncommercial
16 vehicles with three or fewer axles.

17 (e)

18 (f) The plans and specifications for each transportation project
19 ~~constructed~~ developed, maintained, repaired, rehabilitated,
20 reconstructed, or operated pursuant to this section shall comply
21 with the department's standards for state transportation projects.
22 A The lease agreement shall include performance standards,
23 including, but not limited to, levels of service. The agreement
24 shall require facilities on the state highway system to meet all
25 requirements for noise mitigation, landscaping, pollution control,
26 and safety that otherwise would apply if the department were
27 designing, building, and operating the facility. If a facility
28 ~~constructed by and leased to a private entity~~ is on the state
29 highway system, the facility leased pursuant to this section shall,
30 during the term of the lease, be deemed to be a part of the state
31 highway system for purposes of identification, maintenance,
32 enforcement of traffic laws, and for the purposes of Division 3.6
33 (commencing with Section 810) of Title 1 of the Government
34 Code.

35 (f)

36 (g) Failure to comply with the lease agreement in any
37 significant manner shall constitute a default under the agreement
38 and the department or the regional transportation agency, as
39 appropriate, shall have the option to initiate processes to revert
40 the facility to the public agency.

1 (h) The assignment authorized by subdivision (c) of Section
2 130240 of the Public Utilities Code is consistent with this
3 section.

4 (i) A lease to a private entity pursuant to this section is
5 deemed to be public property for a public purpose and exempt
6 from leasehold, real property, and ad valorem taxation, except
7 for the use, if any, of that property for ancillary commercial
8 purposes.

9 (j) Nothing in this section is intended to infringe on the
10 authority to develop high-occupancy toll lanes pursuant to
11 Section 149.4, 149.5, or 149.6.

12 (k) Nothing in this section shall be construed to allow the
13 conversion of any existing nontoll or non-user-fee lanes into
14 tolled or user fee lanes with the exception of a high-occupancy
15 vehicle lane that may be operated as a high-occupancy toll lane
16 for vehicles not otherwise meeting the requirements for use of
17 that lane.

18 (l) The lease agreement shall require the lessee to provide any
19 information or data requested by the California Transportation
20 Commission or the Legislative Analyst. The commission, in
21 cooperation with the Legislative Analyst, shall annually prepare
22 a report on the progress of each project and ultimately on the
23 operation of the resulting facility. The report shall include, but
24 not be limited to, a review of the performance standards, a
25 financial analysis, and any concerns or recommendations for
26 changes in the future.

27 (m) No lease agreements may be entered into under this
28 section on or after January 1, 2012.

29 (n) To the extent that the design-build procurement method is
30 utilized for the award of construction or design contracts for
31 projects authorized under this section, those contracts shall be
32 subject to the requirements, parameters, and processes set forth
33 in Chapter 6.5 (commencing with Section 6800) of Part 1 of
34 Division 2 of the Public Contract Code, if that chapter is added
35 by either Assembly Bill 143 of the 2005–06 Regular Session or
36 Senate Bill 59 of the 2005–06 Regular Session.

37 SEC. 2. Section 149.7 is added to the Streets and Highways
38 Code, to read:

39 149.7. (a) A regional transportation agency, as defined in
40 Section 143, in cooperation with the department, may apply to

1 the commission to develop and operate high-occupancy toll
2 lanes, including the administration and operation of a value
3 pricing program and exclusive or preferential lane facilities for
4 public transit, consistent with the established standards,
5 requirements, and limitations that apply to those facilities in
6 Sections 149, 149.1, 149.3, 149.4, 149.5 and 149.6.

7 (b) The commission shall review each application for the
8 development and operation of the facilities described in
9 subdivision (a) according to eligibility criteria established by the
10 commission. For each eligible application, the commission shall
11 conduct at least one public hearing in northern California and
12 one in southern California.

13 (c) Following public hearings, the commission shall submit an
14 eligible application and any public comments made during the
15 hearings to the Legislature for approval or rejection. Approval
16 shall be achieved by the enactment of a statute. The number of
17 facilities approved under this section shall not exceed four, two
18 in northern California and two in southern California.

19 (d) A regional transportation agency that develops or operates
20 a facility, or facilities, described in subdivision (a) shall provide
21 any information or data requested by the commission or the
22 Legislative Analyst. The commission, in cooperation with the
23 Legislative Analyst, shall annually prepare a report on the
24 progress of the development and operation of a facility
25 authorized under this section. The commission may submit this
26 report as a section in its annual report to the Legislature
27 required pursuant to Section 14535 of the Government Code.

28 (e) No applications may be approved under this section on or
29 after January 1, 2012.

30 ~~SECTION 1. Section 17581 of the Government Code is~~
31 ~~amended to read:~~

32 ~~17581. (a) No local agency shall be required to implement or~~
33 ~~give effect to any statute or Executive order, or portion thereof,~~
34 ~~during any fiscal year and for the period immediately following~~
35 ~~that fiscal year for which the Budget Act has not been enacted for~~
36 ~~the subsequent fiscal year if all of the following apply:~~

37 ~~(1) The statute or Executive order, or portion thereof, has been~~
38 ~~determined by the Legislature, the commission, or any court to~~
39 ~~mandate a new program or higher level of service requiring~~

1 reimbursement of local agencies pursuant to Section 6 of Article
2 XIII B of the California Constitution.

3 (2) The statute or Executive order, or portion thereof, or the
4 commission's test claim number, has been specifically identified
5 by the Legislature in the Budget Act for the fiscal year as being
6 one for which reimbursement is not provided for that fiscal year.
7 For purposes of this paragraph, a mandate shall be considered to
8 have been specifically identified by the Legislature only if it has
9 been included within the schedule of reimbursable mandates
10 shown in the Budget Act and it is specifically identified in the
11 language of a provision of the item providing the appropriation
12 for mandate reimbursements.

13 (b) Notwithstanding any other provision of law, if a local
14 agency elects to implement or give effect to a statute or
15 Executive order described in subdivision (a), the local agency
16 may assess fees to persons or entities which benefit from the
17 statute or Executive order. Any fee assessed pursuant to this
18 subdivision shall not exceed the costs reasonably borne by the
19 local agency.

20 (c) This section shall not apply to any state-mandated local
21 program for the trial courts, as specified in Section 77203.

22 (d) This section shall not apply to any state-mandated local
23 program for which the reimbursement funding counts toward the
24 minimum General Fund requirements of Section 8 of Article XVI
25 of the Constitution.

26 SEC. 2. Section 17581.5 of the Government Code is amended
27 to read:

28 17581.5. (a) A school district may not be required to
29 implement or give effect to the statutes, or portion thereof,
30 identified in subdivision (b) during any fiscal year and for the
31 period immediately following that fiscal year for which the
32 Budget Act has not been enacted for the subsequent fiscal year if
33 all of the following apply:

34 (1) The statute or portion thereof, has been determined by the
35 Legislature, the commission, or any court to mandate a new
36 program or higher level of service requiring reimbursement of
37 school districts pursuant to Section 6 of Article XIII B of the
38 California Constitution.

39 (2) The statute, or portion thereof, or the commission's test
40 claim number, has been specifically identified by the Legislature

1 in the Budget Act for the fiscal year as being one for which
2 reimbursement is not provided for that fiscal year. For purposes
3 of this paragraph, a mandate shall be considered to have been
4 specifically identified by the Legislature only if it has been
5 included within the schedule of reimbursable mandates shown in
6 the Budget Act and it is specifically identified in the language of
7 a provision of the item providing the appropriation for mandate
8 reimbursements.

9 (b) This section applies only to the following mandates:

10 (1) The School Bus Safety I (CSM-4433) and II (97-TC-22)
11 mandates (Chapter 642 of the Statutes of 1992; Chapter 831 of
12 the Statutes of 1994; and Chapter 739 of the Statutes of 1997).

13 (2) The School Crimes Reporting II mandate (97-TC-03; and
14 Chapter 759 of the Statutes of 1992 and Chapter 410 of the
15 Statutes of 1995).

16 (3) Investment reports (96-358-02; and Chapter 783 of the
17 Statutes of 1995 and Chapters 156 and 749 of the Statutes of
18 1996).

19 (4) County treasury oversight committees (96-365-03; and
20 Chapter 784 of the Statutes of 1995 and Chapter 156 of the
21 Statutes of 1996).